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**Human Rights Committee**
**123rd session**

**Summary record (partial)* of the 3522nd meeting**
Held at the Palais Wilson, Geneva, on Tuesday, 24 July 2018, at 3 p.m.

*Chair*: Mr. Shany

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* No summary record was prepared for the rest of the meeting.

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*The meeting was called to order at 3.05 p.m.*

**Follow-up to concluding observations on State party reports**

*Draft report of the Special Rapporteur for follow-up to concluding observations* (CCPR/C/123/R.1)

1. **Mr. Politi** (Special Rapporteur for follow-up to concluding observations) drew the attention of Committee members to his draft report (CCPR/C/123/R.1).

2. **Mr. Ben Achour** said that he would like the Committee to add to the agenda an item on devising a simplified procedure for follow-up to concluding observations and communications. The current procedure imposed too much work on the secretariat, which must contact numerous government departments, non-governmental organizations (NGOs) and others.

3. **The Chair** said that several activities to improve follow-up were under way. Firstly, a report that contained a set of recommendations on follow-up had been drafted and would be discussed at the Committee's next session. He encouraged the Committee members to bear Mr. Ben Achour's proposal in mind when preparing for that discussion. Secondly, the Committee had been asked to complete a questionnaire on follow-up in the context of its internal consultations for the 2020 review of the treaty body system. It might be possible to develop a position on follow-up in the light of the results of that questionnaire. Lastly, he would soon raise the issue of the format of follow-up reports with the Bureau. Among the questions to be discussed would be whether to produce a single report for all States, or different reports for different States.

*Burundi*

4. **Mr. Politi** said that in the draft, Burundi had been evaluated with a D, owing to its failure to cooperate with the Committee's follow-up procedure. No follow-up report had been received from the State party in relation to its concluding observations on its second periodic report (CCPR/C/BDI/CO/2), despite repeated communications sent by the secretariat.

5. **The Chair** said that he took it that the Committee wished to give the State party a D grade.

6. *It was so decided.*

*Malta*

7. **Mr. Politi** said that he proposed giving a C for the State party's response to paragraph 13 of the Committee's concluding observations on its second periodic report (CCPR/C/MLT/CO/2), which addressed the question of abortion. With regard to paragraph 16, which related to the administrative detention of migrants and asylum seekers, he proposed giving a B for all subparagraphs except perhaps 16 (c), which referred to the establishment of specific time limits and alternatives to detention. As the State party's reply on that issue was vague, the Committee might consider a C grade more appropriate.

8. **The Chair** asked whether the substantive reforms to the migration detention system alluded to in the summary of the State party's reply to paragraph 16 had been introduced before or after the Committee had issued its concluding observations.

9. **Ms. Cleveland** said that the Committee could consider giving an E for the State party's follow-up to paragraph 13. The State party had merely reiterated its legal position with respect to abortion and had used language that implied disagreement with the Committee's recommendations.

10. **Mr. Politi** said that it was a borderline case, and he wished to hear members' views. He would be amenable to changing the C to an E if members saw fit. That would, however, send a harsh message to the State party.

11. **The Chair** said that some elements of the State party's response indicated a willingness to take action. A possible solution would be to split the paragraph, giving a C grade to one part and an E to the other.

12. **Mr. de Frouville** said that it was not a matter of being accommodating or harsh, but rather of being rational. The Ministry of Health's reaffirmation that there was no medical need for therapeutic abortion in Malta effectively warranted an E-grade evaluation.

13. **Mr. Santos Pais** said that he would be more in favour of giving a C. The State party had at least indicated that abortions were allowed when the mother's life was at risk. A grade of E would send an exceedingly harsh message and would also set a bad precedent.

14. **Ms. Pazartzis** said that a C was more appropriate, as the State party had provided a response. The Committee had a practice of reserving E grades for outright rejections of its recommendations.

15. **Ms. Brands Kehris** said that, while the case was a borderline one, the State party's replies merely reaffirmed its legal position, maintaining the framework already in place. Moreover, the State party's reference to "awareness initiatives on prevention measures" could be a way of circumventing the need for abortion, rather than allowing it. By reiterating that it saw no therapeutic need for abortion in Malta, the State party was apparently rejecting the Committee's recommendations, which would warrant an E.

16. **Ms. Cleveland** said that it would be useful to know whether annexes II and III, referred to in the State party's replies, provided information on increased measures for awareness initiatives, or merely confirmed that the State party prioritized awareness raising.

17. **Ms. Santana** (Office of the United Nations High Commissioner for Human Rights) said that annexes I and II related to sexual health and dated from before the Committee had issued its concluding observations. Annex III referred to migration policy. The State party had not provided information on the date of the substantive reforms alluded to in its reply to paragraph 16.

18. **Mr. Politi** said that splitting the grade would be a good solution, as the State party was still criminalizing abortion, but it had made some attempt at follow-up. He proposed giving the State party a C for its follow-up to the Committee's recommendation to ensure the implementation of education and awareness programmes, and an E for its response to the recommendation to revise its abortion legislation.

19. **Ms. Pazartzis** said that she supported Mr. Ben Achour's proposal to review the whole follow-up procedure. It was essential to bear in mind that the Committee was grading responses, not substance. Grade C meant that the reply or action was not satisfactory, which was appropriate in the case in question. Grade E was reserved for States parties that adopted a very negative approach to the Committee.

20. **Mr. de Frouville** said that, when grading responses, it was important to separate form from substance. Although the State party's response was polite, it still constituted a refusal to revise its legislation, so an E was warranted.

21. **The Chair** said that he took it that the Committee approved of the rapporteur's proposal to give an E for the State party's follow-up to the first part of paragraph 13 and a C for its follow-up to the second part. He also took it that the Committee agreed with the proposal to give a B for the follow-up to subparagraphs 16 (a) and (f) and 16 (b), (c) and (d), and a C for the follow-up to subparagraph 16 (e).

22. *It was so decided.*

*Cambodia*

23. **Mr. Politi**, drawing attention to the proposed evaluation of the follow-up to the Committee's concluding observations on the second periodic report of Cambodia (CCPR/C/KHM/CO/2 and CCPR/C/KHM/CO/2/Add.1), said that he proposed giving the State party a grade of C for its reply to paragraph 11, on impunity for serious human rights violations.

24. *It was so decided.*

25. **Mr. Politi** said that he also proposed giving a C for the State party's follow-up to the recommendations contained in paragraph 13, on the prohibition of torture and ill-treatment.

26. **Ms. Kran** said that, although she would not object to giving a C if the Committee saw fit, aspects of the State party's reply indicated a clear rejection of the recommendations, which would justify an E. Specifically, the State party claimed that some claims of the use of torture had been made without grounds or certainty. Moreover, the establishment of the National Committee for the Prevention of Torture had actually taken place a few years before the State party's dialogue with the Committee. Information received from NGOs cast serious doubt on whether any meaningful action had been taken by the State party.

27. **Ms. Pazartzis** said that she agreed that the State party's reply did not reflect meaningful action. In fact, the response was quite negative and thus resembled the response from Malta, to which the Committee had just given an E. However, the case was borderline, and on the basis of all the available information, including that received from NGOs, the Committee might decide to issue a C.

28. **Mr. Santos Pais** said that the Committee's evaluation paragraph was confusing. Instead of referring to the independence of the court system, it referred to the "independency of the court". Moreover, it was unclear whether the National Committee for the Prevention of Torture was a national preventive mechanism. If it was, the Committee's statement that no information had been provided on the establishment of the national mechanism for the prevention of torture would make no sense; in that case, it would be more pertinent to ask whether the mechanism was effective in practice. The State party had also referred to the intervention of several judicial authorities in handling cases in detention centres. Perhaps that should be taken into account when grading the State party's follow-up.

29. **The Chair** said that it would be useful if the secretariat could clarify whether the cases in which the court had found that police officials had committed acts of intentional violence had occurred before or after the publication of the Committee's concluding observations.

30. **Ms. Cleveland** said that the Committee had a practice of giving a C when a State party provided information without implementing its recommendations and an E when a State party rejected the recommendations or indicated measures that ran contrary to them. The Committee should therefore consider how it interpreted the State party's assertion that some claims of the use of torture had been made without grounds or certainty. In her view, the assertion was not a rejection of the sort that would merit an E. She was therefore in favour of giving a C.

31. **Ms. Santana** (Office of the United Nations High Commissioner for Human Rights) said that the State party had reported that the courts had ruled against police officials in cases of torture twice, respectively in 2010 and in 2013.

32. **Mr. Politi** said that, in his experience as a Committee member, he had seen many States parties receive Cs for generic replies such as the one provided by Cambodia.

33. **The Chair** said he took it that the Committee members agreed with the Special Rapporteur's proposal to give the State party a C for its reply concerning paragraph 13.

34. *It was so decided.*

35. **Mr. Politi**, replying to comments made by **Mr. Santos Pais** and **Ms. Brands Kehris**, said that in consultation with the secretariat, he would take a closer look at the second sentence of the Committee's evaluation of the reply concerning paragraph 13, so as to ensure that it followed logically from the information provided by the State party.

36. Paragraph 21 of the concluding observations contained multiple recommendations concerning freedom of expression and association. The proposed grades were Cs for the information provided in follow-up to the recommendations contained in subparagraphs (a), (b) and (c), and a B for that provided in follow-up to the recommendation contained in subparagraph (d). In subparagraph (d), the State party had been asked to review pending legislation, in particular a bill on cybercrime. The B rating was somewhat uncertain,

however, as an NGO had provided troubling information about the possible effects of the cybercrime bill.

37. **The Chair** said that the State party had indicated that it was reviewing the cybercrime bill, as requested by the Committee. The B was thus acceptable, and the grades proposed in the draft should remain unchanged.

38. *It was so decided.*

*Canada*

39. **Mr. Politi** said that Canada should receive three Bs and a C for its reply to the Committee's request for information on the steps it had taken to give effect to the recommendations made in subparagraphs (a), (b), (c) and (d) of paragraph 9 of the concluding observations on the country's sixth periodic report (CCPR/C/CAN/CO/6). The C was for the reply on the action taken in follow-up to subparagraph (c), in which the State party had been asked to investigate, prosecute and punish the persons responsible for murders and disappearances of indigenous women and girls. The reply to paragraph 12, on immigration detention and related matters, merited a C, while the replies to subparagraphs (a) and (b) of paragraph 16, on indigenous lands and title, should be given a B and a C, respectively.

40. **Ms. Cleveland** said that the proposed grades raised methodological questions. A grade of B had been proposed for subparagraph (a) of paragraph 9, in which the State party had been asked to conduct a national inquiry into missing and murdered indigenous women and girls, but in the light of the extensive action required of the State party and the limited time (just one year) it had had to submit its follow-up report, she felt that an A would be justified.

41. **The Chair** said that he wished to draw Committee members' attention to the submission by the Feminist Alliance for International Action (FAFIA), an NGO, which indicated that the inquiry was in a state of collapse.

42. **Mr. Politi** said that the State party had not indicated what had been accomplished as a result of the inquiry. The gaps in the information provided by the State party, combined with the submissions by NGOs, suggested that a B was appropriate.

43. **The Chair** said that if there were no objections, he would take it that the Committee members accepted the ratings proposed in relation to paragraphs 9 and 12.

44. *It was so decided.*

45. **Mr. Politi** said that the B grade proposed for subparagraph (a) of paragraph 16, in which the State party had been asked to seek the free, prior and informed consent of indigenous people whenever legislative or other developments affected their lands and rights, could be changed to a C. Amnesty International had reported that Canada continued to issue permits for resource development projects opposed by indigenous peoples.

46. **Ms. Pazartzis** said that she favoured giving the State party a C. Its reply did not show that it had given effect to the Committee's recommendation.

47. **The Chair** said that it would be interesting to know whether the planned development of a federal reconciliation framework, mentioned in the State party's follow-up replies, would help give effect to the recommendation made by the Committee.

48. **Mr. Politi** said that the information provided by the State party indicated only that such a framework would be developed, not that anything specific had actually been achieved.

49. **Ms. Santana** (Office of the United Nations High Commissioner for Human Rights) said that in its replies to the Committee's request for follow-up information, the State party had referred twice to the planned framework. The framework would apparently help provide a means of acting on a number of recommendations relating to indigenous issues.

50. **Mr. Politi** proposed retaining the B evaluation contained in the initial draft.

51. *It was so decided.*

*Suriname*

52. **Mr. Politi** said that a B should be given for the reply to paragraph 10 of the Committee's concluding observations on the State party's third periodic report (CCPR/C/SUR/CO/3).

53. *It was so decided.*

54. **Mr. Politi** said that an E had been proposed for the State party's information on the efforts made to implement one of the recommendations contained in paragraph 22. That grade was appropriate because the State party, disregarding the Committee's recommendation, had indicated that it did not intend to repeal the Amnesty Act, which would make it possible for the perpetrators of past human rights violations to remain unpunished. The steps taken by the State party to act on another recommendation made in the same paragraph merited a C.

55. **Ms. Pazartzis** asked why the State party's follow-up reply to paragraph 22, which had not included any subparagraphs, had been given two grades, rather than one.

56. **Ms. Cleveland** said that she was in favour of giving the E and that there was no reason to assign the State party a second grade for the related, but largely insignificant, second component of its reply.

57. **The Chair** said he took it that the Committee wished to give the State party a single grade, an E, for the steps it had taken in follow-up to the recommendations in paragraph 22. He also took it that the Committee wished to adopt the grade proposed in relation to paragraph 32, a C.

58. *It was so decided.*

*Kazakhstan*

59. **Mr. Politi** said that a C should be given for the reply to paragraph 18 of the Committee's concluding observations on the State party's second periodic report (CCPR/C/KAZ/CO/2). The grades proposed under subparagraphs (a) to (f) of paragraph 24, which contained recommendations on torture and ill-treatment, included one B (for subparagraph (a)) and five Cs (for subparagraphs (b) to (f)).

60. **Mr. Santos Pais** said that, for paragraph 24, the State party should have provided additional information about what it had done to implement the recommendation made by the Committee in subparagraph (b). As for the Committee's evaluation of the State party's reply to subparagraph (f), it seemed somewhat ill-advised to question the independence of the Kazakh national preventive mechanism simply because it answered to the Ombudsman's Office. If the Ombudsman's Office was independent, the national preventive mechanism was likely to be independent, too.

61. **The Chair** said that the Committee's task was to evaluate the information as provided by the State party. If that information did not make it possible to determine whether the mechanism was independent, the grade assigned would have to be a C.

62. **Ms. Cleveland** said that it would be helpful to know whether the criminal justice reforms mentioned in the State party's replies to subparagraphs (a) and (b) of paragraph 24 had been introduced before or after the adoption of the Committee's concluding observations. It would also be helpful to know whether, as the State party had indicated, an amendment had in fact been adopted establishing that allegations of torture were to be investigated within three days. Such an amendment would go some way towards giving effect to the recommendation made by the Committee in subparagraph (b) of its concluding observations. She welcomed the presentation of the grades given for paragraph 24 in the text of the draft. In the table at the start of the review of the replies of the State party, however, they were presented differently. The presentation styles should be harmonized in the section of the draft currently under consideration and in other sections.

63. **The Chair** said that if a three-day deadline for opening investigations into allegations of torture had been put in place, the grade under subparagraph (b) could be raised to a B.

64. **Mr. Politi** said that although it could be risky to grade too generously, he would accept the Chair's suggestion.

65. **The Chair** said he understood that the Committee wished to assign a C to the State party's reply for paragraph 18, Bs for subparagraphs (a) and (b) of paragraph 24 and Cs for its replies to subparagraphs (c) to (f). He would take it that, if there were no further questions, the Committee also accepted the Special Rapporteur's proposal to give the State party Cs for subparagraphs (a) and (b) of paragraph 54, on freedom of association and participation in public life, and a B for subparagraph (c).

66. *It was so decided.*

*The discussion covered in the summary record ended at 4.55 p.m.*